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19
20 **UNITED STATES DISTRICT COURT**
21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 JENNY LISETTE FLORES; *et al.*,) Case No. CV 85-4544
23)
24 Plaintiffs,)
25) **Defendants' Ex Parte Application to**
26) **Lift Restrictions in Paragraph 4.e of the**
27 v.) **June 26, 2020 Order, ECF No. 833;**
28)
29 WILLIAM P. BARR, Attorney) **Memorandum of Points and**
30 General of the United States; *et al.*,) **Authorities;**
31) **Declaration;**
32 Defendants.) **[PROPOSED] Order.**
33) [Hon. Dolly M. Gee]

**Defendants' Ex Parte Application to Lift Restrictions in
Paragraph 4.e of the June 26, 2020 Order, ECF No. 833**

Pursuant to Local Rule 7-19, Defendants hereby apply ex parte for an order from this Court lifting the restrictions in Paragraph 4.e of the Court's June 26, 2020 order prohibiting the transfer of A.F.P.P. to an adult detention facility when he ages out of juvenile detention on July 7, 2020. Defendants request this amendment to the Court's order for the reasons set forth in the accompanying memorandum of points and authorities and Declaration. Counsel for Defendants met and conferred with counsel for Plaintiffs by phone regarding the subject of this ex parte application. The parties were not able to reach any resolution regarding this issue, and counsel for Plaintiffs has stated that Plaintiffs oppose the relief requested in this Application.

URGENCY: This relief is sought by means of an ex parte application because A.F.P.P. will age out of juvenile detention on July 7, 2020, and if this relief is not granted on or before that date, Defendants will have no option to comply with this Court's order except to release him from custody. Defendants therefore do not have enough time to notice and file a traditional motion to obtain the requested relief.

1 DATED: July 6, 2020

Respectfully submitted,

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10 /s/ Sarah B. Fabian

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Memorandum of Points and Authorities

On June 26, 2020, the Court issued an order following its review of the reports of the government’s Juvenile Coordinators, and Plaintiffs’ responses. ECF No. 833. Among other things the Court ordered that the Juvenile Coordinators should file new interim reports by July 24, 2020, and that the U.S. Immigration and Customs Enforcement (“ICE”) Juvenile Coordinator “shall report on the status of conditions at the Cowlitz County Juvenile Detention Center (“Cowlitz”) and Northern Oregon Regional Corrections (“NORCOR”) detention facilities, including specific reasons why B.B.B., A.F.P.P., and K.J.A.B. remain in detention. None of these minors who age out shall be sent to an adult detention facility pending resolution of this inquiry. If these Defendants [sic.] remain in detention, the report shall include a detailed explanation demonstrating flight risk and/or danger to the community.” Order ¶ 4.e.

Defendants respectfully ask the Court to lift the prohibition regarding transfer to an adult detention facility for A.F.P.P., who will age out of juvenile detention on July 7, 2020. *See* ECF No. 828 at ¶ 3. If A.F.P.P. cannot be transferred to an adult detention facility on that date, he will need to be released because he cannot be detained at Cowlitz after he turns 18. Declaration of Dawnisha Helland (Helland Decl.) ¶ 11. ICE’s custody of A.F.P.P. is consistent with the requirements of the *Flores* Settlement Agreement (Agreement), an immigration judge’s prior determination of custody, and applicable law governing his custody. Therefore, there

1 is no basis for this Court to continue this restriction on A.F.P.P.'s transfer,
2 particularly because upon turning 18, A.F.P.P. will no longer meet the definition of
3 a minor in paragraph 6 of the Agreement, and therefore he will cease to be a *Flores*
4 class member.
5

6 A.F.P.P. is not subject to release under Paragraph 14 of the Agreement
7 because that Paragraph excludes minors who ICE has determined are a flight risk or
8 danger, and Paragraph 21 then allows for his detention in a juvenile detention
9 facility. *See* Agreement ¶ 14 (“Where the INS determines that the detention of the
10 minor is not required either to secure his or her timely appearance before the INS or
11 the immigration court, or to ensure the minor's safety or that of others, the INS shall
12 release a minor from its custody without unnecessary delay”; ¶ 21 (governing
13 the detention of minors in juvenile detention facilities). ICE determined that
14 A.F.P.P.'s detention was required because he is a flight risk, and to ensure the safety
15 of others because he was arrested while living on his own without his mother to
16 whom he had been previously released, in a house of adult gang members. Helland
17 Decl. ¶ 4. At the time of his arrest he also attempted to attack an ICE officer with a
18 nine-inch knife. *Id.* His detention at Cowlitz therefore is permitted by the
19 Agreement. Given that there is no violation of the Agreement, and the Court lacks
20 authority over his custody after he turns 18, this Court should not restrict ICE from
21 transferring him to an adult detention facility when he turns 18.
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1 ICE further notes that A.F.P.P. is a class member in *Saravia v. Barr*, Case No.
2 17-3615 (N.D. Cal.), and as such he was afforded a hearing before an immigration
3 judge when he was taken into custody. Helland Decl. ¶ 6. At that hearing the
4 immigration judge determined that A.F.P.P.'s continued custody was appropriate
5 because A.F.P.P. was a danger to the public and himself. *Id.* Moreover, upon being
6 taken into custody, A.F.P.P. was served with an I-286 which advised him of his
7 entitlement to a bond hearing. Helland Decl. ¶ 5.¹ A.F.P.P. requested a bond
8 redetermination hearing and was scheduled to receive one on June 29, 2020, but at
9 his request, made through counsel, the hearing was later continued to July 9, 2020.
10 Helland Decl. ¶ 10. While in custody, A.F.P.P. has also received ongoing case
11 reviews from ICE as part of general docket management. Helland Decl. ¶¶ 7-8. He
12 also received an additional assessment for release upon the request of his counsel,
13 made on April 14, 2020. Helland Decl. ¶ 9. During each of these reassessments ICE
14 deemed that A.F.P.P. was still a danger to the community. Helland Decl. ¶¶ 7-9.
15 A.F.P.P. thus has had multiple opportunities to contest ICE's determination that he
16 is a danger, and has an upcoming opportunity—delayed until after his 18th birthday
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25 ¹ A.F.P.P. also signed an I-213 which notified him of the reasons for his detention
26 in a secure facility, and he was provided a list of free legal services providers.
Helland Decl. ¶ 5.

1 at his own request—to have that determination evaluated by an immigration judge
2 for a second time.

3
4 The Court therefore should rescind the portion of the June 26, 2020 order
5 prohibiting the transfer of A.F.P.P. to an adult detention facility upon his 18th
6 birthday. A.F.P.P.’s current custody is not in violation of the Agreement, and
7 A.F.P.P.’s custody, once he reaches 18, is not governed by the Agreement.
8 Moreover, at his upcoming bond hearing A.F.P.P. can challenge determinations by
9 both ICE and an immigration judge that he is a danger, and the immigration judge
10 at that bond hearing has the ability to order that he should be released if the
11 immigration judge determines that release is appropriate.
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1 DATED: July 6, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2020, I served the foregoing pleading and attachments on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/ Sarah B. Fabian
SARAH B. FABIAN
U.S. Department of Justice
District Court Section
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Attorney for Defendants